

**UNITED STATES DISTRICT COURT  
for the  
SOUTHERN DISTRICT OF NEW YORK**

Wilson Jacobson, P.C.  
The Inns of Court Building  
99 Court Street  
Suite 2  
White Plains, New York 10601-4264  
(914) 997-0825  
FAX (914) 997-0830

Attorneys for Plaintiff

<b>SPACE AGE ALARMS, INC.,</b>	)	
Plaintiff	)	
-against-	)	Civil Action No. 07 CV 7606
	)	(CLB) (MDF)
<b>THE BOARD OF EDUCATION OF THE WHITE</b>	)	<b>ECF CASE</b>
<b>PLAINS CITY SCHOOL DISTRICT , MICHAEL</b>	)	
<b>J. LYNCH AND ALARM SPECIALISTS, INC.</b>	)	
Defendants.	)	
	)	

**DECLARATION PURSUANT TO  
28 U.S.C. §1746**

**LEROY WILSON, JR.** declares under penalty of perjury that the following is true and correct.

Grounds for Motion

1. This matter is now back before this Court on remand from the Second Circuit pursuant to its mandate entered on June 26, 2008. See mandate annexed hereto as Exhibit "1".
2. The Court had entered a final Judgment on March 13, 2008 dismissing the complaint and closing out the case without giving the plaintiff leave to amend the complaint after the Court had twice stated at oral argument on the motion that it would give the plaintiff leave to

amend. See final judgment annexed hereto as Exhibit "2" hereto and Transcript of December 14, 2007 pages 7 and 9 annexed hereto as Exhibit "3".

3. After the plaintiff filed its Notice of Appeal on April 9, 2008, the parties entered into a Stipulation to remand the case to this Court. The stipulation was "So Ordered" by the Second Circuit on June 26, 2008. See copy of Stipulation as "So Ordered" annexed hereto (above) as Exhibit "1."

4. By a Memo Endorsed Order filed on June 13, 2008, but not entered until June 27, 2008, this Court had earlier indicated it would grant the instant Rule 60(b) motion. See copy of endorsed Order annexed hereto as Exhibit "4."

5. Plaintiff received notice of the entry of this order on June 27, 2008. See ECF notification annexed hereto as Exhibit "5."

6. Plaintiff did not request leave to amend the complaint in this motion because my research indicates that Plaintiff may not seek affirmative relief in the same motion that requests relief from the judgment. However should the Court grant leave to amend as well, Plaintiff will submit a separate motion along with a proposed amended complaint as instructed by the Court. See Memorandum of Law submitted herewith in support of this motion.

**WHEREFORE** Plaintiff prays that this Court vacate and set aside the Judgment entered on March 13, 2008 and re-open this case.

Dated: White Plains, New York

July 11 2008

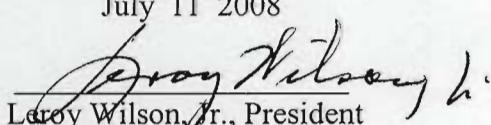
  
Leroy Wilson, Jr., President  
(Bar Code No. LWJr 2473)

Exhibit "1" - mandate

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SPACE AGE ALARMS v. BD ED W.P.

No. 08-1763-cv

SDNY WPSY  
07-08-7606  
Brieant



## STIPULATION FOR REMAND

Whereas the District Court has indicated, in accordance with Second Circuit procedure (Toliver v. County of Sullivan, 957 F. 2d 47, 2d Cir. 1991), its willingness to vacate the judgment and to grant leave to plaintiff to amend its complaint, if this case is remanded to him,  
**WHEREFORE,**

IT IS HEREBY STIPULATED AND AGREED by the parties through their undersigned counsel that the above case is hereby remanded to the District Court for that purpose. By joining in this stipulation, in order to expedite the matter, defendants - appellees do not waive any objections they might have to the granting of leave to amend plaintiff's complaint.

WILSON JACOBSON, P.C.

By: *Leroy Wilson Jr.*  
Leroy Wilson, Jr., Esq.  
99 Court Street, Suite 2  
White Plains, New York  
10601-4264  
(914) 997-0825 797-0830  
Attorney for Appellant

INGERMAN SMITH, LLP

By: *Michael G. McAlpin*  
MICHAEL G. McALPIN, Esq.  
150 Motor Highway, Suite 400  
Hauppauge, New York 11788  
Attorney For Appellees  
School District and Lynch  
(631) 261-8834  
(631) 686-7497  
SO ORDERED:

FOR THE COURT  
Catherine O'Hagan Wolfe, Clerk of Court  
By: *Stanley A. Bass*  
Stanley A. Bass, Staff Counsel

June 26, 2008

JASNE & FLORIO, L.L.P.

By: *Hugh G. Jasne*  
Hugh G. Jasne, Esq.  
30 Glenn Street, Suite 103  
White Plains, NY 10603  
Attorney For Appellee  
Alarm Systems, Inc.  
(914) 997-1212

Specialists

④ 118

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk  
by: *Deputy Clerk*  
DEPUTY CLERK

Exhibit "2" - final judgment

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
Space Age Alarms, Inc.,

07 CIVIL 7606 (CLB) (MDF)

Plaintiff,

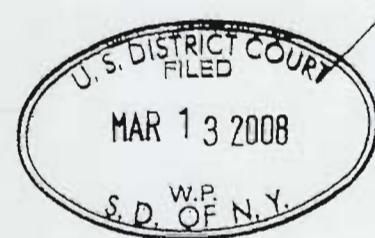
JUDGMENT

-against-

The Board of Education of the  
White Plains City School District,  
Michael J. Lynch and Alarm Specialists,  
Inc.,

Defendants.

----- X



Defendants having moved to dismiss and the said motion having come before the Honorable Charles L. Brieant, United States District Judge and the Court thereafter on March 11, 2008, having handed down its Memorandum and Order, granting defendants' motion (#15) to dismiss and the Breach of Contract claims are dismissed for failure to file a timely Notice of Claim. The Constitutional and Federal statutory claims are dismissed for failure to state a claim. The claims arising under New York Law are dismissed without prejudice because the Court declines to exercise supplemental jurisdiction of those claims, following dismissal of the Federal claims. The Clerk shall file a final judgment, and shall terminate all motions pending as of March 11, 2008 as moot and close the case, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed as to all defendants.

DATED: White Plains, N.Y.  
March 13, 2008

J. Michael McMahon  
Clerk

1:/judgment/spaceage.606

E.O.D.

Exhibit "3" - Transcript of December 14, 2007 pages 7 and 9

1 7ceisspam ag Motion

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5

6 SPACE AGE ALARMS, INC.,

7

8 Plaintiff,

10 v.

07 Civ. 7606 CLB

11

12 THE BOARD OF EDUCATION OF

13 THE WHITE PLAINS CITY SCHOOL

14 DISTRICT and ALARM

15 SPECIALISTS, INC.,

16

18 Defendants.

19 -----x

21 White Plains, N.Y.

22 December 14, 2007

23 11:00 a.m.

25 Before:

1 7ceispam ag Motion

2 MR. WILSON: No, damages as well, your Honor. Because  
3 what they did was to lock out my client from the security  
4 system so that my client could not perform the contract.

5 Now, I'd like to address the remarks that Mr. McAlvin  
6 made. Just before that, your Honor, I feel a duty to point out  
7 to the Court that on page 8 of my memorandum of law in the  
8 second line from the top, the theory that I am talking about is  
9 7 years and not 70 years. I made an error there. And that was  
10 referring to some information out of the Bell Atlantic case.

11 Now, the Court had asked several times what the  
12 parties want. What we want is the Court to deny the motion to  
13 dismiss in its entirety for the reason that the pleadings are  
14 totally adequate under Supreme Court precedence in this case.

15 THE COURT: If they're not, the Court will give you  
16 leave to amend.

17 MR. WILSON: In our case, taking into account what the  
18 Supreme Court said in Ericsson, even if the Court might not  
19 consider the pleading on its face to be sufficient, it could  
20 also consider documents that are attached to the pleadings, and  
21 there are documents attached to the pleadings. Under the  
22 Federal Rules of Civil Procedure those documents are considered  
23 to be a part of the complaint. And their own documents as  
24 well.

25 Mr. McAlvin has mischaracterized what these contracts  
26 said. You will see that he quoted only part of what the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1 7ceispam ag Motion  
2 give those documents to all of the members of the board so that  
3 they would have those, so that when the board finally made its  
4 decision as to whether or not to terminate the contract they  
5 would have my client's information. The fact of the matter is  
6 I did not make a statement on the merits. When I arrived at  
7 the meeting Mr. Salas, who was the assistant superintendent for  
8 business, told me that the matter was going to be tabled. I  
9 simply made a procedural presentation and --

10 THE COURT: This is a pleading issue.

11 MR. WILSON: That's exactly right, your Honor.

12 THE COURT: It's a pleading issue.

13 MR. WILSON: In our opinion, the pleadings are  
14 sufficient under Bell Atlantic and --

15 THE COURT: That's either a yes or no.

16 MR. WILSON: Yes, it is. And to that, I want to point  
17 out to the Court that in their motion to dismiss in the main  
18 papers they cited not one single Supreme Court case which  
19 controlled this issue.

20 THE COURT: I understand your position. I'm treating  
21 it solely as a pleading motion. If the motion is granted,  
22 you'll have leave to amend.

23 MR. WILSON: Thank you, your Honor.

24 THE COURT: Fully submitted, decision reserved.

25 Thank you for your attendance here today.

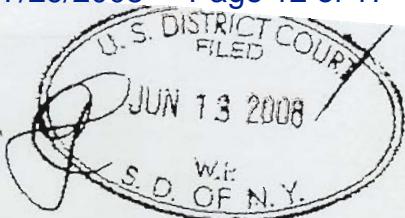
(Proceedings adjourned)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit "4" - Endorsed Order

2  
MEMO ENDORSEMENT



SPACE AGE ALARMS, INC. V BOARD OF EDUCATION OF THE WHITE PLAINS  
CENTRAL SCHOOL DISTRICT

7CV 7606  
08 Civ. 1763 (CLB)

The attached letter submitted by Leroy Wilson, Jr., Esq. and addressed to this Court, seeks leave to file a motion under Rule 60(b), and requests an indication from this Court that such a motion, if filed, would be granted, thereby returning jurisdiction to this Court from the Second Circuit Court of Appeals.

Leave is hereby granted for Counsel to serve and file its Rule 60(b) motion within fifteen (15) business days.

So Ordered.

Dated: June 10, 2008  
White Plains, NY

Charles L. Brieant, USDJ

SDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
C #:  
FILED:

Exhibit "5" - ECF notification

**Leroy Wilson, Jr., Esq.**

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**From:** NYSD\_ECF\_Pool@nysd.uscourts.gov  
**Sent:** Friday, June 27, 2008 1:53 PM  
**To:** deadmail@nysd.uscourts.gov  
**Subject:** Activity in Case 7:07-cv-07606-CLB Space Age Alarms, Inc. v. The Board Of Education Of The White Plains City School District Endorsed Letter  
**TimeMattersID:** M3E179AE3D897982

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**United States District Court for the Southern District of New York**

**Notice of Electronic Filing**

The following transaction was entered on 6/27/2008 at 1:53 PM EDT and filed on 6/13/2008

**Case Name:** Space Age Alarms, Inc. v. The Board Of Education Of The White Plains City School District

**Case Number:** 7:07-cv-7606

**Filer:**

**WARNING: CASE CLOSED on 03/13/2008**

**Document Number:** 32

**Docket Text:**

**ENDORSED LETTER** addressed to Judge Charles L. Brieant from Leroy Wilson dated 6/4/08 re: Request for the Court to consider a procedure under Federal Rules of Civil Procedure rule 60(b).... **ENDORSEMENT:** The attached letter submitted by Leroy Wilson, Jr., Esq. and addressed to this Court, seeks leave to file a motion under Rule 60(b), and requests and indication from this Court, seeks leave to file a motion under Rule 60(b), and requests an indication from this Court that such a motion, if filed, would be granted, thereby returning jurisdiction to this Court from the Second Circuit Court of Appeals. Leave is hereby granted for Counsel to serve and file its Rule 60(b) motion within fifteen (15) business days. **SO ORDERED.. (Signed by Judge Colleen McMahon on 6/12/08) (fk)**

**7:07-cv-7606 Notice has been electronically mailed to:**

Hugh G. Jasne HGJ@Jasne-Florio.com

Michael Gerard McAlvin mmcalvin@ingermansmith.com

Leroy Wilson, Jr leroywilsonjr@nysbar.com, rjacobson@cloud9.net

**7:07-cv-7606 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1008691343 [Date=6/27/2008] [FileNumber=4748709-0  
] [5fe73406cdbe503fc9446cdb1dd5dd19b475458f129c1ede0447d4c91d0ff9ea723  
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UNITED STATES DISTRICT COURT  
for the  
SOUTHERN DISTRICT OF NEW YORK

Wilson Jacobson, P.C.  
The Inns of Court Building  
99 Court Street, Suite 2  
White Plains, New York 10601-4264  
(914) 997-0825  
FAX (914) 997-0830  
Attorneys for Plaintiff

SPACE AGE ALARMS, INC., )  
Plaintiff )  
-against- ) Civil Action No. 07 CV 7606  
 ) (CLB) (MDF)  
 ) ECF CASE  
THE BOARD OF EDUCATION OF THE WHITE )  
PLAINS CITY SCHOOL DISTRICT , MICHAEL )  
J. LYNCH AND ALARM SPECIALISTS, INC. )  
Defendants.

CERTIFICATE OF SERVICE

**Leroy Wilson, Jr., Esq.**, President of Wilson Jacobson, P.C. attorney for Plaintiff herein, duly admitted to practice law in the State of New York, hereby affirms under penalties of perjury and hereby certifies that on the date set forth below, he served the below described papers upon the below listed person(s) at the address (es) listed below by mailing to them a true copy of said papers by regular first class mail, postage prepaid, in a sealed envelope at a depository maintained by the U.S. Postal Service within the City of White Plains, New York.

Papers served each dated July 11, 2008:

- (1) Notice of Motion
- (2) Motion for Relief From Judgment
- (3) Declaration of Leroy Wilson, Jr.
- (4) Memorandum of Law

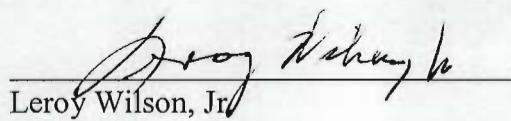
Persons served:

Michael G. McAlvin, Esq.  
Ingerman Smith, LLP  
Attorneys for the School District  
150 Motor Parkway  
Suite 400  
Hauppauge, New York 11788  
1-631-261-8834

Hugh G. Jasne, Esq.  
Jasne & Florio, L.L.P.  
Attorneys for Alarm Specialists, Inc.  
30 Glenn Street, Suite 103  
White Plains, NY 10603  
1-914-997-1212

Date Mailed: July 10, 2008

Dated: July 10, 2008

  
\_\_\_\_\_  
Leroy Wilson, Jr.